



Docket No. 50325-0553 (Seq. No. 4494)

PATENT

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of : Confirmation No.: 6237  
Alan CONLEY, et al. : Group Art Unit: 2171  
Serial No.: 09/886,851 : Examiner: Etienne LEROUX  
Filed: June 20, 2001 :

Title: AUTOMATICALLY GENERATING REPLICATION TOPOLOGY  
INFORMATION FOR USE BY A DIRECTORY SERVICE

**RECEIVED**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

JAN 22 2004

Technology Center 2100

**INTERVIEW SUMMARY**

A telephonic interview was conducted on the above-identified application on January 14, 2003. The participants were Examiner Etienne Leroux and John D. Henkhaus, attorney of record.

Mr. Henkhaus initiated the interview to discuss Mr. Leroux's assessment, in the Office Action mailed January 9, 2004 (Paper No. 6), of the affidavit submitted under 37 C.F.R. 1.131 attached to the Response mailed October 31, 2003.

Mr. Henkhaus directed his comments to two issues that appeared to be Mr. Leroux's reasons for rejecting the affidavit as allegedly insufficient and allegedly not complying with the requirements of 37 C.F.R. 1.131, and that may benefit from clarification, which are:

- (A) the status of the invention that Applicant is attempting to prove through the affidavit and associated Exhibits, i.e., conception or reduction to practice; and
- (B) the absence of specific dates in the Exhibits.

Regarding (A), Mr. Henkhaus discussed that several paragraphs of the affidavit refer to a "functioning version" of a computer program that embodies the invention and that proof of a "functioning version" was probative of a reduction to practice. Furthermore, Mr. Henkhaus pointed out that several paragraphs of the affidavit

specifically state that each Exhibit is "submitted as probative of a reduction to practice of the subject invention prior to ...."

Regarding (B), Mr. Henkhaus discussed that redacting dates from Exhibits in support of an affidavit under 37 C.F.R. 1.131 is a valid and accepted practice, as evidenced by MPEP 715.07, which specifically addresses the scenario in which "the applicant or patent owner does not desire to disclose his or her actual dates, he or she may merely allege that the acts referred to occurred prior to a specified date."

Mr. Leroux discussed that the sufficiency of evidence in support of an affidavit is within an examiner's discretion. Mr. Leroux maintained that evidence without specific dates is a "blank check" and that Applicants could continue to file similar affidavits to antedate any other references that an additional search may find, based on this "blank check".

Mr. Leroux refused a request for another telephonic interview with his supervisor present, and suggested that Applicant prepare the application for Appeal.

An agreement was reached that Mr. Leroux would be willing to reconsider the sufficiency of an affidavit under 37 C.F.R. 1.131 if it included specific dates as to when the invention was reduced to practice.

Respectfully Submitted,

HICKMAN PALERMO TRUONG & BECKER LLP

Date: 1/16/04

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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, Box 1450, Alexandria, VA 22313-1450 (MAIL STOP: A6)

on 1/16/04 by Clare Fungy